

Federal Communications Commission

DA 99-538

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-37
Table of Allotments,)	RM-9238
FM Broadcast Stations.)	
(Palestine and Frankston, Texas))	

REPORT AND ORDER
(Proceeding Terminated)

FCC MAIL SECTION
APR 8 8 36 AM '99
DISPATCHED NY

Adopted: March 10, 1999

Released: April 2, 1999

By the Chief, Allocations Branch:

1. In response to a petition filed by Nicol/Excel Broadcasting, LLC ("Nicol/Excel"), the Commission has before it for consideration the Notice of Proposed Rule Making, 13 FCC Rcd 25158 (1998), requesting the reallocation of Channel 244C2 from Palestine, Texas, to Frankston, Texas, and modification of the construction permit for Station KLIS to specify Frankston as the community of license.¹ Nicol/Excel filed supporting comments in which it reaffirmed its interest in Channel 244C2 at Frankston. No other comments were received in response to the Notice in this proceeding.

2. The proposed reallocation of Channel 244C2 from Palestine to Frankston, Texas, was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community"). Frankston is an incorporated community with a population of 1,127 people.² According to Nicol/Excel, Frankston possesses the civic, social, and commercial attributes necessary to form a distinct community. Further, Frankston contains over 100 businesses including some that identify themselves with the community, such as the Frankston Farm and Ranch Supply, the Frankston Health Care Center, Frankston Lumber Company and the Frankston Reliance Gas Company.

¹ A one step application was granted on May 30, 1997, for Station KLIS, Palestine, which modified the license for Station KLIS to specify operation on Channel 244C2 in lieu of Channel 244A (BPH-9701311C).

² The population figure is from the 1990 U.S. Census.

3. Nicol/Excel asserts that the reallocation of Channel 244C2 from Palestine, Texas, to Frankston, Texas, would result in a preferential arrangement of allotments under the Commission's FM allotment priorities, since it would provide a first local aural transmission service to Frankston without removing the sole local service from Palestine. Nicol/Excel states that while Frankston has no local aural transmission service, Stations KNET(AM) and KYYK(FM) are licensed to Palestine. Nicol/Excel further notes that, at the time the pleading cycle ended in this proceeding, Station KLIS(FM) was operating pursuant to a license for Channel 244A at Palestine but had an unbuilt construction permit for Channel 244C2 at Palestine. Based upon these facts, Nicol/Excel alleged that deleting Channel 244A at Palestine and allotting Channel 244C2 to Frankston would cause no loss of service to the listeners of Channel 244A at Palestine but would result in a gain of service to 214,458 listeners. While it recognized that deleting Channel 244C2 at Palestine and reallocation Channel 244C2 to Frankston would theoretically cause a loss of service to listeners, it contended that such a loss was not relevant because the station was not operating with the Class C2 facilities. Recently, the station began operating on Channel 244C2 at Palestine. Nicol/Excel has updated the record in this proceeding to report that reallocation Channel 244C2 from Palestine to Frankston would result in a loss of service to 23,482 people. However, it contends that all but 367 people will continue to receive five or more full-time reception services and are, therefore, considered to be well served. Of the remaining 367 people affected by the change, Nicol/Excel states that 100 will continue to receive four full-time services and 267 will continue to receive three full-time services.

4. In considering a reallocation and change of community of license proposal, the Commission compares the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures ("FM Priorities"), 90 FCC 2d 88 (1982).³ Using these priorities, we believe that the public interest is best served by reallocation Channel 244C2 to Frankston. Specifically, since the retention of Channel 244C2 at Palestine will not provide a first or second full-time aural reception service and will not be a first local transmission service, it must be considered under Priority (4), other public interest matters. Under this priority, it would provide a second FM service and a third local service to Palestine, a community of 18,042 people. By way of contrast, reallocation Channel 244C2 to Frankston, a community of 1,127 people, would be a first local service under Priority (3), which is a higher allotment priority.⁴ In addition, the reallocation would result in a gain of service to 185,404 people. While we

³ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

⁴ Frankston is an independent community not located within an urbanized area. A staff engineering analysis has determined that the 70 dBu signal will cover approximately 29% of the Urbanized Area of Tyler, Texas. Therefore, a Tuck analysis is not necessary pursuant to our policy set forth in Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352, 10354 (1995). See Huntington Broadcasting Co. v. FCC, 192F.2d 33 (D.C. Cir. 1951), RKO General, Inc., 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

recognize that there would be a loss of service to 23,482 listeners of Channel 244C2 at Palestine from the reallocation and that loss of service is a factor that we independently weigh in change of community cases, this loss of service does not warrant denying this proposal because, as demonstrated by the petitioner, 23,115 of the people in the loss area receive at least five full-time aural services and are, therefore, considered well served. While 100 listeners will be reduced from five to four full-time reception services and 267 will be reduced from four to three full-time reception services, we find that this loss of service is outweighed by the public interest benefits of this proposal -that is, a first local service to 1,127 people. See, e.g., Healdton and Krum, Texas, DA 99-493, released March 12, 1999 (loss of fourth service to 22 people and loss of fifth service to 3,762 people outweighed by public interest benefits of granting interrelated change of community proposals). This loss of service is also mitigated somewhat by the fact that the station began operating on Channel 244C2 only a few weeks ago.

5. An engineering analysis has determined that Channel 244C2 can be allotted to Frankston, Texas, in compliance with the Commission's minimum distance separation requirements at Nicol/Excel's specified site.⁵ In accordance with Section 1.420(i) of the Commission's rules, we also modify Station KLIS's authorization to specify operation on Channel 244C2 at Frankston, Texas, as its new community of license.

6. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective May 17, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

Community	Channel No.
Frankston, Texas	244C2
Palestine, Texas	252C2

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Nicol/Excel Broadcasting, LLC for Station KLIS, Channel 244C2, Palestine, Texas, IS MODIFIED to specify operation on Channel 244C2 at Frankston, Texas, subject to the following conditions:

⁵ The coordinates for Channel 244C2 at Frankston are 32-02-02 NL and 95-24-30 WL. Although Channel 244C2, at this site, is short spaced to Station KMOO, Channel 244A, Mineola, Texas, the license for Station KMOO has been modified in MM Docket No. 96-10 to specify operation on Channel 260A. See 12 FCC Rcd 4099 (1997). A petition for reconsideration of this proceeding was dismissed, and this case has become final. Station KMOO has a construction permit for Channel 260A at Mineola (BPH-981221IA).

(a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Nicol/Excel Broadcasting, LLC, permittee of Station WLIS, is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade and change in community of license.

9. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Station KMOO-FM
KMOO, Incorporated
P. O. Box 628
Mineola, Texas 75773

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

